



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNR, MNDC, OLC, ERP, RP, PSF, LRE, O, FF

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for the cost of emergency repairs to the rental unit, pursuant to section 33;
- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement, pursuant to section 62;
- an order to the landlord to make emergency repairs to the rental unit for health or safety reasons, pursuant to section 33;
- an order to the landlord to make repairs to the rental unit, pursuant to section 33;
- an order to the landlord to provide services or facilities required by law, pursuant to section 65;
- an order to suspend or set conditions on the landlord's right to enter the rental unit, pursuant to section 70;
- other unspecified remedies; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord's agent, ZV ("landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord confirmed that she had authority to represent the individual landlord named in this application, as an agent at this hearing. this hearing lasted approximately 168 minutes in order to allow both parties, particularly the tenant, an opportunity to provide full submissions at this hearing.

The landlord confirmed receipt of the tenant's amended application for dispute resolution hearing package ("Application"). In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's Application.

During the hearing, the tenant confirmed that she wished to withdraw her entire Application, except for her Application for a monetary order for money owed or compensation for damage or loss under the *Act, Regulation* or tenancy agreement and to recover the filing fee for her Application. Accordingly, the remaining portions of the tenant's Application are withdrawn.

During the hearing, the tenant requested an amendment to her Application, to increase her monetary claim from \$14,000.00 to \$21,409.87. The tenant provided a monetary worksheet with this increased amount, as well as invoices and receipts to support her monetary claim, with her Application. However, the tenant did not correct the monetary amount in the Application itself. The landlord confirmed that she received a copy of the tenant's monetary worksheet and that she had notice of the tenant's increased claim. In accordance with my authority under section 64(3)(c) of the *Act*, I amend the tenant's Application to increase her monetary claim from \$14,000.00 to \$21,409.87. I find no prejudice to the landlord in doing so, as the landlord had notice of the tenant's claim and an opportunity to respond.

#### Issues to be Decided

Is the tenant entitled to a monetary award for money owed or compensation for damage or loss under the *Act, Regulation* or tenancy agreement?

Is the tenant entitled to recover the filing fee for this Application from the landlord?

#### Background and Evidence

The landlord testified that, as per the tenancy agreement, this tenancy began on September 15, 2013 for a fixed term ending on March 31, 2014 after which it transitioned to a month-to-month tenancy. The tenant provided a copy of the written tenancy agreement with her Application. The tenant stated that she began living in this rental unit on September 5, 2009 and that the landlord named in this Application, took over the tenancy in 2013. The landlord confirmed that this tenancy transferred over to the landlord in 2013. Monthly rent in the amount of \$1,600.00 is payable on the first day of each month. A security deposit of \$800.00 was paid by the tenant and the landlord retains this deposit. The tenant continues to reside in the rental unit. The tenant indicated that she intends to vacate the rental unit by June 30, 2015, pursuant to a 2 Month Notice to End Tenancy for Landlord's Use of Property.

The tenant seeks a monetary order of \$21,409.87 plus the \$100.00 filing fee for her Application. The tenant provided the following breakdown in her monetary worksheet:

- \$288.83 for medical expenses and treatments;
- \$11,057.15 for lost work wages;
- \$285.03 for Residential Tenancy Branch ("RTB") filing-associated expenses;
- \$3,974.19 for rent already paid to the landlord;
- \$76.37 for meal expenses;
- \$5,656.00 for moving expenses; and
- \$72.30 for transportation expenses.

The tenant indicated that she suffered medical injuries when she slipped and fell on a pool of water in her rental unit on March 17, 2015. She stated that the pool of water was due to a water leak that the landlord and strata company failed to repair in a timely fashion. The tenant testified that the leak occurred in the hallway of her rental unit on March 13, 2015.

The tenant testified that she was advised by the strata company that this water leak issue did not involve the landlord but only involved the strata company. She noted that she does not have a contract with the strata company and therefore, she is seeking relief against the landlord. The tenant stated that it was the landlord's responsibility to deal with the strata company and to ensure that the water leak was repaired and that the water leak took too long to repair. The tenant stated that she pays rent to the landlord and that she should have full and proper enjoyment of her rental unit during this time. The tenant explained that water leaks have occurred more often since this landlord assumed control of her rental unit.

The landlord stated that the tenant's water leak problems are a strata company issue. She stated that the strata company deals with the repairs and any associated actions that need to be taken. The landlord stated that the tenant is required to have tenant's liability insurance to cover events such as water damage, and that this provision is specifically contained in section 14 of the tenancy agreement. The tenant confirmed that she did not purchase any liability insurance for this rental unit.

The tenant maintained that she made phone calls to the strata company to report the water leak. The tenant stated that the strata company advised her that they would have someone repair the water leak on March 16, 2015 and they failed to attend on that date. The tenant indicated that the strata company then approached her and asked if they could repair the leak on March 17, 2015 in order to avoid weekend overtime pay costs and she agreed. The tenant explained that she slipped and fell in the hallway on the morning of March 17, 2015 around 6:30 a.m., as it was dark and she did not notice the pool of water that had accumulated since the water leak had started. The tenant indicated that the failure of the repair person to attend at the rental unit in a timely

fashion caused the water to pool in the hallway, and hence, her slip and fall. The landlord indicated that if the strata company was one day late in addressing the tenant's water leak that it is the strata company's issue, not the landlord's.

The landlord testified that the water leak that the tenant complained of on March 13, 2015, was addressed immediately by the strata company. The landlord indicated that she was notified by the strata company because this was a strata issue. The landlord stated that the tenant was dealing with the strata company directly and that the landlord was not approached to rectify this issue. She indicated that the repair people had to open the walls in the tenant's rental unit in order to determine the source of the leak. She stated that the holes in the wall remained open for different periods of time in order to ensure that the water leak had stopped and then drywall would be applied to close these holes. The landlord stated that it was the tenant's own negligence that caused the slip and fall. She stated that the tenant should have been watching where she was walking before she entered the dark hallway early in the morning. The tenant indicated that the leak stopped when the strata company changed the pipes but they did not dry the floor or the walls, causing property damage and ongoing issues. The tenant stated that although she does not have proof, she believes there is mold in the rental unit and that is why the landlord intends to change her flooring now under the 2 Month Notice.

The tenant stated that she was unable to work, she had to seek medical attention, and she had to undergo medical treatments and consume medications, due to her injuries from the slip and fall. The tenant submitted receipts for her treatments and prescription costs. The landlord indicated that this hearing is the first time that she has heard that the tenant cannot sleep and that the tenant's allergies are due to the mold that the tenant says is present in the rental unit. The tenant submitted invoices for missed medical appointments, claiming that she missed these appointments because of her injuries. The tenant also provided copies of clinical records from her family doctors. The tenant indicated that she owns her own business but that she was unable to work and she had to ask other employees to cover her work shifts, because of her injuries. The tenant provided a handwritten calculation of her lost wages, as she indicated that she did not have income tax returns, income tax assessments, paystubs or other documentation to confirm her missed time from work, because she is self-employed. She stated that although she does not have a driver's license, she was unable to take public transportation, due to her injuries. The tenant claimed that she incurred taxi-cab expenses during these times and she submitted receipts for these expenses.

The landlord indicated that the landlord was not advised about the many expenses that the tenant would be claiming until she filed her Application. The landlord indicated that if the tenant was seeking reimbursement, that the landlord should have been notified of

the expenses being sought at the time they were being incurred, not at an RTB hearing. The landlord stated that all of the tenant's expenses being claimed at this hearing, would be covered by tenant's liability insurance and that the landlord was advised of this by the strata company. The landlord stated that the tenant could have stayed in a hotel or another suitable accommodation with this insurance coverage. The landlord also indicated that the tenant should be claiming medical expenses through a medical insurer, not from the strata company or the landlord.

The tenant stated that she has experienced multiple previous water leaks in this rental unit and the water has been shut off during these times. The tenant seeks a return of her rent from March 17 to May 31, 2015. The tenant testified that she had to endure the inconvenience of repair people in her rental unit while the water leak was being fixed, her rental unit was messy and the repair people did not cover her belongings to prevent them from getting damaged and dirty. The tenant submitted photographs, emails and letters regarding the holes in the wall and the water leak. The tenant also claimed that she lost sleep and there were frequent shut offs of water, rendering her unable to cook meals and drink water during these times. The tenant submitted receipts for prepared meals that she purchased from restaurants. The tenant also seeks future costs for cleaning, packing and moving her belongings when she leaves the rental unit on June 30, 2015. She stated that she is unable to complete the move on her own because of her medical injuries from the slip and fall. The tenant provided an estimate of her moving expenses.

The landlord testified that the water leak was not due to the landlord's negligence. She stated that the rental building is very old and therefore, the water pipes are old. The landlord noted that water leaks have been an ongoing problem in this rental building and have affected multiple tenants' units, as the leaks are usually in the walls of the common areas in the building. The landlord explained that the tenant has been aware of water leak issues in this rental building for many years. The landlord indicated that during certain times, water has been shut off in the building in order to facilitate repairs to the pipes. She stated that the tenant's rent was reduced from \$1,600.00 to \$1,400.00 during multiple previous water leaks. The landlord indicated that a plumber has always addressed water leak issues and that the landlord has received quotes for re-piping the building in order to resolve these multiple water leak problems.

### Analysis

While I have turned my mind to all the digital and documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of both parties' claims and my findings around each are set out below.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, the onus is on the tenant to prove, on a balance of probabilities, the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I accept both parties' evidence that there was a water leak in the tenant's rental unit. Both parties agreed that the water leak issue was under the jurisdiction of the strata company. The landlord stated the water leak was due to ongoing common water pipe problems throughout the building and the age of the rental building. I find that the strata company addressed the water leak problem in a reasonable amount of time. The landlord kept in touch with the strata company in order to ensure that the water leak was being appropriately dealt with. The tenant agreed that the initial water leak stopped, although a new problem began on the night before this hearing.

I find that the landlord fulfilled his obligations under section 32 of the *Act*, to ensure that the rental unit complied with health, safety and housing standards required by law and that the unit was suitable for occupation by the tenant, having regard to its age, character and location. I find that, on a balance of probabilities, the tenant was unable to show that the water leak repair took longer than industry standards or that the landlord caused a delay in the repair. I find that the water leak was not due to the landlord's or the tenant's negligence and therefore, the tenant's claim fails on the second part of the test above. The tenant cannot establish that the water leak occurred due to the landlord's actions or negligence in violation of the *Act*, *Regulation* or tenancy agreement. Accordingly, I dismiss the tenant's Application for a monetary order in the amount of \$21,409.87, without leave to reapply.

I note that the tenant has also claimed for RTB hearing-related expenses for filing her Application. The only hearing-related fees that are recoverable under section 72 of the *Act*, are for filing fees, which the tenant has already claimed. Therefore, the tenant is not entitled to hearing-related fees or transportation costs associated with filing her Application.

As the tenant was unsuccessful in her Application, she is not entitled to recover the \$100.00 filing fee from the landlord.

### Conclusion

The tenant's Application for a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement and to recover the filing fee, is dismissed without leave to reapply.

The remainder of the tenant's Application was withdrawn.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 30, 2015

---

Residential Tenancy Branch